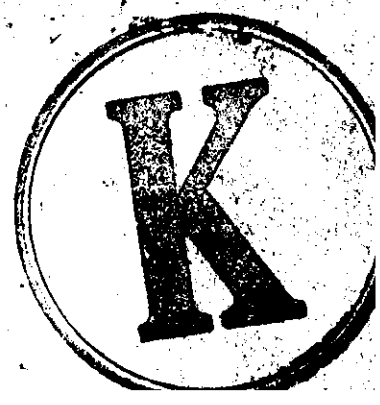
1949

File No. O. Sale of Motor Spirit Tax/49
Legal Department
A. Branch



Subject:- Opinions Under the Bombay Sale of Motor Spirit Taxation Act 1948

M & E

O. Sale of Motor Spirit Tax/49

530 A.

C O N T E N T S.

Legal Department File No. 0. Sale of Motor Spirit Tax/49.

Sr. No.	N.I./O/No.	Subject	pages
1.	ON. 7054 25-6-49	B'bay sales of Motor Spirit Taxation Act 1946. sc. 3(1) B'bay S of M.S.T. Rules 1948, Rule 14(3) Whether importer is liable to Sales Tax in respect of Petrol consumed by him.	1 - 3

Lg 916.

Office of the R.L.A.

Bombay Sales of Motor Spirit Taxation Act, 1946 Section 3'1) Bom. S. of M. S.T. Rules 1948 Rule 14(3)

Whether importer liable to sales Tax in respect of Petrol consumed by him

It appears that Messrs. Burmah-Shell oil Company who hold licences for retail and wholesale sales of motor spirit under the Bombay Sales of Motor Spirit Taxation Act, 1946, contend that as importers they are not liable to sales tax inrespect of petrol consumed by vehicles owned or hired by them. The Collector of Bombay considers that, sinc a person cannot sell a thing to himself, the provisions of section 3 would not be applicable to petrol consumed by the Company. R.L.A. is requested to advise.

The taxing provision is contained in section 3(1) of the Bombay Sales of Motor Spirit Taxation Act, 1946, which provided that there shall be levied and collected a tax on the sale of motor spirit at such stage between its manufacture or import as the case may be andits consumption as may be prescribed. It is Clear from this provisionthat motor spirit on import shall have to be taxed at some stage before it is consumed. It is true that the tax shall be levied only on the sale of motor spirit at some stage between its import andits consumption. What is, therefore, necessary to decide is whether an importer would be deemed to have sold motor spirit when he consumes it for his own vehicles. An importer as defined in section 2(2) of theAct means a person who carries on the trade of importing motor spirit into the Province of Bombay. An importer is a trader within the meaning of section 2(8) and is required to take a licence under section 6(1). The second proviso to section 3(1) provides that such tax shall not be levied on the sale of motor spirit by a manufacturer or importer except on retail sale thereof. A retail sale as defined in section 2(6) means a sale of motor spirit for the purpose of consumption by the person by whom oron whose behalfit is or may be purchased. An importer would be liable to the tax on the retail sale of motor spirit. Ordinarily

sale implies transfer of ~~xxxx~~ ownership in exchange for the pric paid or promised or part paid and part promised. What is essential is the transfer of the property or goods from one t' another. An importer imports motor spirit for thepurpose of retail sale, if he merely imports for his own consumption then he would not be considered a retail dealer and no tax would obviously be leviable on motor spirit thus imported for his own consumption. ~~This Rule~~ This is made clear by rule14(3) which states that nothing in this rule shall apply in case of motor spirit consumed by an importer direct. If, however, an importer who imports motor spirit forretail sale consumes partof it for his own use, he would obviously be deemed to have sold it to himself ih the sense of consumption for his own use. Such consumption would be covered by section 3(1). and consequently the tax ~~xxx~~ would be leviable on motor spirit consumed by an importer. The point is, however, not free from doubt. It would, therefore be expedient to amend suitably the relevant provisions. Inthemeantime, thepresent practice of levying tax on motor spirit consumed by the importer who imports for retail sale may continue.

P.M.Lad
24-6

Remembrancer of Legal Affairs.

U.R. to H.D., No. 7054 , dated the 25th June 1949.

S.C. 7/6